

2007 No. 1440

HARBOURS, DOCKS, PIERS AND FERRIES

**The Mersey Docks and Harbour Company (Seaforth River
Terminal) Harbour Revision Order 2007**

Made - - - - - *9th May 2007*

Coming into force - - - - - *30th May 2007*

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SCHEDULE — REPEALS AND REVOCATION

The Mersey Docks and Harbour Company has applied for a harbour revision order under section 14 of the Harbours Act 1964(a);

The Secretary of State is satisfied as mentioned in section 14(2)(b) of that Act;

The Secretary of State (being the appropriate Minister under subsection (7) of section 14(b) of that Act) in exercise of the powers conferred by that section and now vested in him(c) makes the following Order:—

PART 1 PRELIMINARY

Citation and commencement

1.—(1) This Order may be cited as the Mersey Docks and Harbour Company (Seaforth River Terminal) Harbour Revision Order 2007 and shall come into force on 30th May 2007.

(2) The Mersey Docks and Harbour Acts and Orders 1857 to 2004 and this Order may be cited together as the Mersey Docks and Harbour Acts and Orders 1857 to 2007.

Interpretation

2.—(1) In this Order—

“the 1971 Act” means the Mersey Docks and Harbour Act 1971(d);

“the Company” means the Mersey Docks and Harbour Company;

“deposited plans” and “deposited sections” mean respectively the plans and sections (numbered sheets 1, 2 and 3) prepared in duplicate, signed by the Head of Ports Division in the Department for Transport and marked “The Mersey Docks and Harbour Company (Seaforth River Terminal) Harbour Revision Order 2007” of which copies are deposited at the offices of the Secretary of State for Transport and the head office of the Company;

“existing enactments” means the Mersey Docks and Harbour Acts and Orders 1857 to 2004;

“level of high water” means the level of mean high-water springs;

“limits of deviation” means the limits of deviation shown on the deposited plans;

“tidal works” means so much of any works authorised by this Order as is on, under or over tidal waters or tidal lands below the level of high water;

“Trinity House” means the Corporation of Trinity House of Deptford Strond;

(a) 1964 c. 40; section 14 was amended by the Transport Act 1981 (c. 56), section 18 and Schedule 6, paragraphs 2, 3, 4(1) and 14, section 40 and Schedule 12 Part II and by the Transport and Works Act 1992 (c. 42), section 63(1) and Schedule 3, paragraph 1.

(b) For the definition of “the Minister” (mentioned in section 14(7)) see section 57(1).

(c) S.I. 1981/238.

(d) 1971 c. lvii.

“the undertaking” means the undertaking of the Company as from time to time existing;

“works” means the works authorised by articles 3 and 5.

(2) All points, directions, lengths, areas and other measurements (other than the limits of deviation) shall be construed as if the words “or thereabouts” were inserted after each such point, direction, length, area or other measurement.

(3) Reference points specified in this Order shall be construed as references to Ordnance Survey National Grid reference points.

(4) References in the existing enactments to the undertaking of the Company shall be construed as including references to any works carried on by the Company or any of its subsidiaries under or by virtue of this Order.

PART 2 WORKS PROVISIONS

Power to construct and maintain certain works

3.—(1) Subject to the provisions of this Order, the Company may in the lines and situations and upon the lands delineated on the deposited plans and within the limits of deviation shown thereon and according to the levels shown on the deposited sections, construct and maintain the following works in the Metropolitan Borough of Sefton, with all necessary works and conveniences connected therewith—

Work No. 1

A quay wall 854 metres in length, including berths for vessels, extending into the River Mersey (Outer Estuary) commencing on the river wall at the south west corner of Royal Seaforth Dock at a point at SJ331857395867, thence extending in a straight line to a point at SJ332437395313, thence extending in a straight line to and terminating at a point at SJ332460395319 on the river wall at the Gladstone River Entrance.

Work No. 2

A sewer, being an extension of the existing Bootle Northern Outfall Sewer, commencing at the existing outfall on the north river wall at Gladstone Dock at a point at SJ332304395717 thence extending in a straight line for a distance of 220 metres and terminating at an outfall to be constructed in the quay wall forming Work No. 1 at a point at SJ332152395558.

(2) The Company may, for the purposes of the works authorised by paragraph (1), demolish and remove any structures lying within the limits of deviation and enclose and reclaim so much of the bed of the River Mersey (Outer Estuary) and of the foreshore as lies within the limits of deviation and may hold and use the same as part of the undertaking.

(3) Subject to the provisions of this Order, the Company may, within the limits of deviation, reconstruct, extend, enlarge, replace or relay the works and may maintain the same as reconstructed, extended, enlarged, replaced or relaid.

Power to deviate

4. In the construction of the works the Company may deviate laterally from the lines or situations shown on the deposited plans within the limits of deviation relating to that work shown on those plans and may deviate vertically from the levels of the works shown on the deposited sections to any extent not exceeding three metres upwards and to any extent downwards as may be found necessary or convenient.

Subsidiary works

5.—(1) The Company may from time to time within the limits of deviation provide and operate such dock facilities, together with works ancillary to those facilities, as may be necessary or convenient for the construction of the works or the operation of the undertaking, and for this purpose the Company may provide, construct and maintain roads, buildings, sheds, offices, workshops, depots, walls, foundations, fences, gates, tanks, pumps, conduits, pipes, drains, wires, mains, cables, electrical substations, signals, conveyors, cranes, container handling equipment, lifts, hoists, lighting columns, weighbridges, stairs, ladders, stages, platforms, catwalks, equipment, machinery and appliances and such other works and conveniences as may be necessary or expedient.

(2) Without prejudice to paragraph (1), the Company may within the limits of deviation carry out and maintain such other works as may be necessary or convenient for the purposes of, or in connection with or in consequence of, the construction, maintenance or use of the work including—

- (a) works for the accommodation or convenience of vessels (including dolphins and pontoons); and
- (b) works to alter or extend the position of apparatus, including mains, sewers, drains, pipes, conduits, cables, electrical substations and electrical lines.

Period for completion of works

6.—(1) Subject to paragraph (2), if the works are not completed within ten years from the coming into force of this Order, or such extended time as the Secretary of State may on the application of the Company allow, then on the expiration of that period or such extended time (as the case may be) the powers granted to the Company by this Order for making and maintaining the works shall cease except as to so much of the works as is then substantially commenced.

(2) Nothing in paragraph (1) shall apply to any works carried out under paragraph (3) of article 3 or article 5.

Power to dredge

7.—(1) The Company may, for the purposes of constructing and maintaining the works and of affording access to the works by vessels, from time to time deepen, dredge, scour, cleanse, alter and improve so much of the bed, shores and channels of the river as adjoin or are near to the works and may use, appropriate or dispose of the materials (other than wreck within the meaning of Part IX of the Merchant Shipping Act 1995(a)), from time to time dredged by it.

(2) No such materials shall be laid down or deposited—

- (a) in contravention of the provisions of any enactment as respects the disposal of waste; or
- (b) in any place below the level of high water otherwise than in such position and under such conditions and restrictions as may be approved or prescribed by the Secretary of State.

Obstruction of works

8. Any person who intentionally obstructs any person acting under the authority of the Company in setting out the lines of the works, or who interferes with, moves or removes any pole, stake, station point or bench mark established for the purpose of such setting out, shall be guilty of an offence and liable on summary conviction to a fine not exceeding level 3 on the standard scale.

Works to be within area of Sefton Metropolitan Borough Council

9.—(1) On the accretion date, the area of the whole or of so much of the works authorised by article 3 and article 5 as shall have been completed or substantially commenced shall, to the extent

(a) 1995 c. 21, *see* section 255(1).

that they are outside the area of the Sefton Metropolitan Borough Council, be annexed to and incorporated with the area of the council.

(2) In this article “accretion date” means whichever of the following dates first occurs, namely, the date when the works so authorised have been completed or the date when the powers conferred by article 6 shall cease to have effect.

Tidal works not to be executed without approval of Secretary of State

10.—(1) Unless construction has commenced within one year of the coming into force of this Order, a tidal work shall not be constructed, reconstructed, extended, enlarged, replaced or relaid except in accordance with plans and sections approved by the Secretary of State and subject to any conditions and restrictions imposed by him before the work is begun.

(2) If a tidal work is constructed, reconstructed, extended, enlarged, replaced or relaid in contravention of paragraph (1)—

- (a) the Secretary of State may by notice in writing require the Company at its own expense to remove the tidal work or any part thereof and restore the site thereof to its former condition; and if, on the expiration of 30 days from the date when the notice is served upon the Company, it has failed to take reasonable steps to comply with the requirements of the notice, the Secretary of State may execute the works specified in the notice; or
- (b) if it appears to the Secretary of State urgently necessary to do so, he may remove the tidal work, or part of it, and restore the site to its former condition;

and any expenditure incurred by the Secretary of State in so doing shall be recoverable from the Company.

Lights on tidal works during construction

11.—(1) The Company shall at or near a tidal work during the whole time of the construction, reconstruction, extension, enlargement, replacement or relaying thereof, exhibit every night from sunset to sunrise such lights, if any, and take such other steps for the prevention of danger to navigation as the Secretary of State shall from time to time direct.

(2) If the Company fails to comply in any respect with any requirement of a direction given under this article, it shall be guilty of an offence and liable on summary conviction to a fine not exceeding the statutory maximum and on conviction on indictment to a fine.

Provision against danger to navigation

12.—(1) In case of injury to or destruction or decay of a tidal work or any part thereof the Company shall as soon as reasonably practicable notify Trinity House and shall lay down such buoys, exhibit such lights and take such other steps for preventing danger to navigation as Trinity House shall from time to time direct.

(2) If the Company fails to notify Trinity House as required by this article or to comply with any requirement of a direction given under this article it shall be guilty of an offence and liable on summary conviction to a fine not exceeding the statutory maximum and on conviction on indictment to a fine.

Abatement of works abandoned or decayed

13.—(1) Where a tidal work is abandoned, or suffered to fall into decay, the Secretary of State may by notice in writing require the Company at its own expense either to repair and restore the work or any part thereof, or to remove the work and restore the site thereof to its former condition, to such an extent and within such limits as the Secretary of State thinks proper.

(2) Where a work consisting partly of a tidal work and partly of works on or over land above the level of high water is abandoned or suffered to fall into decay and that part of the work on or over land above the level of high water is in such condition as to interfere or to cause reasonable apprehension that it may interfere with the right of navigation or other public rights over the

foreshore, the Secretary of State may include that part of the work, or any portion thereof, in any notice under this article.

(3) If, on the expiration of 30 days from the date when a notice under this article is served upon the Company, it has failed to comply with the requirements of the notice, the Secretary of State may execute the works specified in the notice and any expenditure incurred by the Secretary of State in so doing shall be recoverable from the Company.

Survey of tidal works

14. If the Secretary of State deems it expedient to do so, the Secretary of State may order a survey and examination of a tidal work or of the site upon which it is proposed to construct such a work, and any expenditure incurred by the Secretary of State in so doing shall be recoverable from the Company.

Permanent lights on tidal works

15.—(1) After the completion of a tidal work the Company shall at the outer extremity thereof exhibit every night from sunset to sunrise such lights, if any, and take such other steps, if any, for the prevention of danger to navigation as Trinity House shall from time to time direct.

(2) If the Company fails to comply in any respect with a direction given under this article it shall be guilty of an offence and liable on summary conviction to a fine not exceeding the statutory maximum and on conviction on indictment to a fine.

Extinguishment of public rights to parade etc. and creation of new public footpath

16.—(1) All rights to use the land shown marked in brown on sheet number 3 of the deposited plans as a parade or walk for the recreation of the public shall be extinguished and the Company may use that land as it sees fit for the purposes of the undertaking.

(2) The land shown marked green on sheet number 3 of the deposited plans shall be deemed to have been dedicated as a footpath by the Company.

(3) The enactments mentioned in the first and second columns of the Schedule to this Order are hereby repealed to the extent specified in the third column of that Schedule.

PART 3

MISCELLANEOUS AND GENERAL

Defence to proceedings in respect of statutory nuisance

17.—(1) Where proceedings are brought under section 82(1) of the Environmental Protection Act 1990(a) (summary proceedings by persons aggrieved by statutory nuisances) in relation to a nuisance falling within paragraph (g) of section 79(1) of that Act (statutory nuisances and inspections) no order shall be made, and no fine shall be imposed, under section 82(2) of that Act if the defendant shows that the nuisance relates to premises used by the Company for the purposes of or in connection with the exercise of the powers conferred by this Order with respect to the construction or maintenance of the works; and

- (a) that the nuisance is attributable to the carrying out of works which are being carried out in accordance with a notice served under section 60, or a consent given under section 61 or 65, of the Control of Pollution Act 1974(b); or
- (b) that the nuisance is a consequence of the construction, maintenance or use of the works and that it cannot reasonably be avoided.

(a) 1990 c. 43.
(b) 1974 c. 40.

- (2) The following provisions of the Control of Pollution Act 1974, namely—
- (a) section 61(9) (consent for work on construction site to include statement that it does not of itself constitute a defence to proceedings under section 82 of the Environmental Protection Act 1990); and
 - (b) section 65(8) (corresponding provision in relation to consent for registered noise level to be exceeded);

shall not apply where the consent relates to the use of premises by the Company for the purposes of or in connection with the exercise of the powers conferred by this Order with respect to the construction or maintenance of the work.

Defence of due diligence

18.—(1) In proceedings for an offence under article 11, 12 or 15 it is a defence for the Company to prove that it took all reasonable precautions and exercised all due diligence to avoid the commission of such an offence.

(2) If in any case the defence provided by paragraph (1) involves the allegation that the commission of the offence was due to the act or default of another person, the Company shall not, without leave of the court, be entitled to rely on that defence unless, within a period of seven clear days before the hearing, it has served on the prosecutor a notice in writing giving such information identifying, or assisting in the identification of, that other person as was then in its possession.

Saving for Trinity House

19. Nothing in this Order shall prejudice or derogate from any of the rights, duties or privileges of Trinity House.

Crown rights

20.—(1) Nothing in this Order affects prejudicially any estate, right, power, privilege, authority or exemption of the Crown and, in particular, nothing in this Order authorises the Company to take, use, enter upon or in any manner interfere with, any land, hereditaments or rights of whatsoever description (including any part of the shore or bed of the sea or any river, channel, creek, bay or estuary)—

- (a) belonging to Her Majesty in right of Her Crown and under the management of the Crown Estate Commissioners, without the consent in writing of those Commissioners; or
- (b) belonging to Her Majesty in right of Her Majesty’s Duchy of Lancaster without the consent in writing of the Chancellor of the Duchy of Lancaster; or
- (c) belonging to a Government Department, or held in trust for Her Majesty for the purposes of a Government Department, without the consent in writing of that Government Department.

(2) A consent under paragraph (1) above may be given unconditionally or subject to such conditions and upon such terms as may be considered necessary or appropriate.

Disapplication of regulation 60 of the Conservation (Natural Habitats &c) Regulations 1994

21.—(1) Regulation 60 of the Conservation (Natural Habitats &c) Regulations 1994(a) (“the Habitats Regulations”) shall not apply to any planning permission which relates to the works and which is granted by article 3(1) of the Town and Country Planning (General Permitted Development) Order 1995(b) for the class of development described as permitted development in Part 11 of Schedule 2 to that Order.

(2) Paragraph (1) does not apply if and to the extent that the works—

(a) S.I. 1994/2716.
(b) S.I. 1995/418.

- (a) do not form part of the plan and project which was subject to an appropriate assessment in accordance with regulation 48 of the Habitats Regulations in connection with the making of this Order; and
- (b) are not subject to a further consent, permission or authorisation by a competent authority as defined in the Habitats Regulations.

Signed by authority of the Secretary of State for Transport

9th May 2007

Phil Carey
Head of Ports Division
Department for Transport

SCHEDULE

Article 16

REPEALS AND REVOCATION

<i>Chapter or S.I. No.</i>	<i>Title or short title</i>	<i>Extent of repeal</i>
11 Victoria (1848) Cap x	An Act to authorize the Trustees of the Liverpool Docks to build Warehouses, to construct additional Wet Docks and other Works, and for other Purposes	In section xxiii (which was partially saved from repeal by the Mersey Dock Acts Consolidation Act 1858(a)), the words “and the said Embankment, or a sufficient portion thereof, shall and may be used as a parade or walk for the recreation of the public”
1906 c.xl	Mersey Docks and Harbour Board Act 1906	Sections 13 and 14
1966 c.xxiii	Mersey Docks and Harbour Board (Seaforth Works) Act 1966	Section 25
S.I. 1984/1878	Mersey Docks and Harbour Revision Order 1984	The whole Order

(a) 1858 c. xcii.

EXPLANATORY NOTE

(This note is not part of the Order)

This Order authorises the Mersey Docks and Harbour Company to construct and maintain works at Sefton, including authorisation for carrying out subsidiary works. The works will form part of the undertaking of the Company. The Order removes the statutory right to parade and walk granted by 11 Victoria (1848) Cap x, and dedicates a new public footpath.

The deposited plans and sections referred to in Article 2(1) may be inspected during normal working hours at the offices of The Mersey Docks and Harbour Company at Maritime Centre, Port of Liverpool, L21 1LA.

2007 No. 1440

HARBOURS, DOCKS, PIERS AND FERRIES

The Mersey Docks and Harbour Company (Seaforth River
Terminal) Harbour Revision Order 2007

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